General and Revenue Secretariat.

rial Nos. four

Part B for July 1931.

SUBJECT.

O. S. 458/28.29 on the file of the I Munsiff Bangalore v Director of Industries & Commerce Vs. S. A. Rasool

therefore distinguishable from the present case before us where the act itself does not prove dishonesty.

Appropriation of £ 5,220 of P.Astier's bill.

On the 23th June 1923 Mr. Vardhamania drew a draft for £ 4,000 on Mr. Movlankar at 90 days sight and Mysore Bank for being discounted and the proceeds the account of the Essenflour Products Co., in the Bank. (Exhibit P.334(a), P.327, P.667(a), P.328, P.333(a). This draft was due to mature on 24.10-1923. The bill of P.Astier for £ 5222-12-0 in respect of invoice No.3 P.336 for oil sold to him on 14.9.23 was due to mature on 1.11.23. On 24.10.1923 there was not sufficient money to the credit of the Essenflour Co., with Mr. Movlankar to meet the draft as admitted even by D.W. 1 Mr. Movlankar's credit in his own bank account was also on the nil side . Exhibit P.206 shews that the bill - amount of P.Astier £ 5,220 was utilised to meet the draft of £ 4,000 and this fact is also established by the entries P.201(d) P.336(g) and (h) P.670(a), P.136(f) and P.137(a), in the accounts of the Essenflour Co. These are undisputed facts.

The points in dispute are how money was raised on the accepted bill of P.Astier in the name of Mr. Movlankar and what was Mr. Sitaramachar's part in it. The entry of £ 2-13-8 relating to French stamps on this bill in Coutts's account P.238 indicates that as in similar cases this bill was sent first to Messrs. Coutts & Co., on the 24th September 1923 for collection. This tallies with the date of credit of this amount to the Essenflour Products Co., in the half - yearly account Exhibit P.206. There can be no doubt that this bill was collected not by Messrs. Coutts & Co., but by the National Provincial Bank P.668(h). This shews that the bill first sent to Coutts & Co., was withdrawn and collected at the National Provincial Bank on

the bank advanced £ 4,000 to meet the draft on 24-10-23 the date on which Mr. Vardhamania's draft of 29-6-23 matured.

Mr. Movlankar's version is that three or four days before the draft matured he and Mr. Sitaramachar went to the National Provincial Bank to arrange for the sum of £ 4,000 to meet the draft. Exhibit P.329 shows that Mr. Sitaramachar was on to instruct Mr. Movlankar how to meet the draft. In Exhibit P.65 dated 29/8/23 Mr. Sitaramachar wrote that he would himself be in-charge of the sandal oil business. Exhibit P.708 and P.74 show that Mr. Sitaramachar was in London from the 21st October 1921 The witness got a little confused over certain dates when assailed in Cross-examination. The dates related to six years ago and that does not affect his veracity. Mr. Movlankar stated that Mr. Sitaramachar asked him to discount or pledge the bill of P.Astier. Since the full amount of £ 5,220 was credited to Movlankar's account in the National Provincial Bank it was a case of Movlankar taking an advance on the pledge of the bill for collection. Exhibit P.709 shows that Mr. Sitaramachar was privy to the utilisation of the amount of £ 5,220 to meet the draft of Mr. Vardhamania Mr. Movlankar had given the same version to Mr. Parthasarathi in London.

The only circumstance to which my attention has been called to show that Mr. Sitaramachar was not privy to this transaction is his letter Exhibit P.331 to Mr.Vardhamania. Therein he only glossed over the matter asking Mr.Vardhamania not to get alarmed. Exhibit P.709 and P.523 clearly show that Mr. Sitaramachar had an understanding with Mr.Movlankar which was not known to the co-directors of the Essenflour Products Co. The understanding was that Mr.Sitaramachar would mislead the co-directors by telling them that the sandal oil moneys utilised to meet drafts were not sandal oil moneys but were loans from the private funds of Mr.Movlankar. It seems to me therefore that Exhibit P.331 was intended only to mislead

After consultation with Mr. Sitaramachar in London(P.337 to P.339) Mr. Vardhamania drew the draft P.334 (b) on 9-4-24 on Mr. Movlankar for £ 5,000 and sent it to the Mysore Bank for being discounted and the proceeds credited to the account of the Rosenflour Products Co., with the Bank (P.334(c), P.334(m). P.335(d). The draft matured at the end of July 1924 . To meet the draft Mr.Movlankar drew the amount of £ 5,000 from the sandal oil collections in two instalmen as follows:-

23rd July 1924 £ 753-7-4 Exhibit P.376 and P.380

28th July 1924 £ 2,246-12-8 Exhibit P.377 and Do.

The withdrawal and remittance are entered in Movlankar's half-yearly account Exhibit P.208 accepted by the Rosenflour Co. These transactions have also been entered in the account books of the Rosenflour Co., Exhibit P.126 (g), P.142 (d) and (e). P.326(d) and (e) and P.671(a). These withdrawals involve according to P.W.2 and D.W.1 (vide C.6 and D.264) a misappropriation of £ 1,278-7-8. The figure worked out by P.W.4 Deputy Comptroller is £ 1,790-8-8. This difference is due to the fact that the Deputy Comptroller disallowed brokerage of £ 541-13-8 up to 30-6-24 P.673(b) and included bank-charges £ 27-12-8 P.673(d) which P.W.2 and D.W.1 have not done. Hence the difference of £ 515.1-0 between their results.

The main aspect of the matter with which we are concerned is how far this implicates Mr. Sitaramachar . Exhibit P.709 shows that Mr. Sitaramachar permitted Mr. Movlankar to withdraw £ 5,000 from the sandal oil collections. The defence advanced certain calculations in Exhibit D.94 to prove that there was no overdraft by Rosenflour but D.W.1. who prepared that statement admitted that it was incorrect as it ignored the opening debit balance of £ 1,988-6-8 and admitted

Letter No: 420/28-29 dated 6th march 1929 from the PP, Bangalore, forwarding for approval a draft plaint with the connected records in a suit to be filed in the Central Industrial Workshop against S.A. Rasool for recovery of Rs 4162-9-8 due on a surety bond executed by him for the decree amount due by the Electric Warehouse.

(1) The electric warehouse of which Mr. S.M. Hussain was the proprietor owed a sum of Rs 3092-1-9 to the C.I. Workshop on account of supplies purchased by them. A suit was filed for recovery of this amount in march 1924 in O.S. 76 of 24-25 on the file of the [illegible] Bangalore and an attachment before judgt of the immovables in the shop was obtained during the pendency of the suit there was attempt at compromise, but since nothing came out of it an exparte decree was obtained on 16. 11. 1925

Security in Consideration of which
attachment might be raised to be void
(3) The Director thereupon on his letter of the
5th April 1916 made certain recommendation
to Court for sanction and intimated that
he had secured an agreement executed by
the debtor and a surety by name
Rasool in Consideration of which
Court the attachment to be re
(Vide last para in Flag R).
(4) The agreement mentioned herein is
Flagged T, and is now made the basis
of a fresh suit against the Surety one
Rasool. It is dated 11th March 1916.
The agreement does not mention
the raising of the attachment as one of
the Considerations for which it is executed.
on the other hand, it mentions of some proposals
being made by Insolvent debtors & the fix
of the Director to address Court in the
and Contains an undertaking by
to abide by the orders of Court & to pay
Sum to be decided by Court in the man
mentioned in the agreement. It is bein
the proper discharge of these terms the
Rasool appears to stand liable
ely and to hypothecate contained

Serial No.

property valued at Rs. 2000/-, the title deed of which he seems to have deposited with the Director.

(5) Govt in their letter of 11.4.76 did not accept the recommendations of the Director & the same was communicated by the Director to Mr. S.M. Hussain on his letter of the 18th May 1976.

(6) Fresh execution proceedings seem to have taken on the decree against Mr. Hussain in Sept'r 76.

(7) The Deptt debtor moved the Govt for some concessions on the recommendation of the Director (Mag J.), Govt agreed that if a sum of Rs 1590-150 was paid the case may be closed, otherwise the full decree to be executed. The facts was written to but the letters were returned unserved as the whereabouts of the debtor was not known. The Supdt of C. J. Works suggested proceedings against the Trustees & the P.P.'s opinion was obtained & in accordance with it, the P.P. has been instructed by the Deptt to file the Suit & the draft plaint of which is now sent for approval of G.R.

(8) Sec 47 of the C.P.C. cannot bar this

Serial No.

Suit, since it is not against the ~~pro~~ debtor but against the Surety, and ~~since~~ the case is not one to which Comes under Sec 145 C.P.C. Consequently the only question that is to be considered is whether by the agreement (Plaj1), the Warad has become liable as a Surety. ~~as to whether by such a step has been accepted by~~ The deed looks more like an offer to stand as Surety rather than a Surety bond by itself. Though after the Execution of this agreement, the Director Caused the attachment to be withdrawn, the agreement itself does not say that the Consideration for the Warad to stand as a Surety was the promise of the Director to have the attachment raised. But this perhaps has to be proved by Conduct. ~~Though~~ Though there is nothing on the record to show that the Surety Consented to the raising of the attachment.

(2) Even supposing that the Surety has become liable under the agreement P, he can be held responsible only for the amount of Rs 15,90 x 0.50, which is the sum finally ~~decided~~ decided by Court to be due from Mr Hussain (Plaj V). It is not clear how he can be sued for the whole of the decree amount.

General and Revenue Secretariat.

Land File No. 109 of 1928

Serial No. (10) As regards the solvency of the Surety the Circuit Commissioner reports that he is doing some business there but has no house or other property. The Assistant Headman there says that Mr Nasook has in his occupation certain lands, though the patta stands in others names, but neither the value of the lands nor the encumbrances on it are reported by the Circuit Commissioner. Under these circumstances it cannot be definitely said whether the amount due may be recovered can be realised. This is however a point for the consideration by the Deputy. In case the filing of the suit is approved, the PPr may be instructed to take an attachment before judgment.

PPr
8/3/28

(12) I am afraid this case has not received the care & scrutiny it deserved at the hands of the Pros: Proctor. The attachment of the defendant properties seems to have been waived without the consent of the surety, and in this respect it is open to the latter to raise a good defence.

(13) Again, the date of the agreement has altered from 10.3.26 to 16.3.26. The Pub: Mort^r says nothing about it, and it does not seem to be clear how he prepared the plaint without knowing whether the date. It is worthy of note that the alternative does not seem to bear the initials of the surety. Why, when & by whom the alteration was made and nothing on which the file contains no information.

(14) The Ex. O. (H:U) also seems to be defective since it directs that the decree should be executed against the J/D debtor if he fails to pay Rs: 15'90 ts'— & is silent as regards the surety. Further, there is nothing to show that this order was communicated to the surety or that he was called upon to pay the amount.

(15) There is no justification to claim Rs: 3487—ts'— from the surety as per draft plaint. At best, the surety can be said to be liable for Rs: 15'90—15'— only & not the larger amount. He is not liable to pay interest as the said amount has not been demanded from him. If notice has been issued to him, interest may be claimed from the date of the notice

General and Revenue Secretariat.

Loan File No. 104 of 192 9

Serial No.

(16) If the suit is not filed on Monday, the 11th inst it may be held over time granted

(17) The plaint may be returned to the above time & the Pub: Pros to file the suit immediately, if so required by the Director of P & B

(18) The Pub: Pros may be asked to explain why he did not send his report in time He should make to obtain over extend & such papers allowing 15 days time for Lenthing.

10 M.
8/3

Draft to PP's perused

DSP
8/3/29

DS Rao
P. M.
8/3
8/3

2 To the Public Prosecutor, Bangalore.
P 5000/ dated 8/3/29
intimating that the suit has to be filed on 11th & requesting a report as well as copy of the plaint in due course.

Serial No.

Letter No: 451/28.29 dated 2.4.29 from the PP Bangalore intimating that the suit was filed on 11.3.29 (O.S. 458 of 28.29) & that it was posted to 25.3.29 for Summons but that as it was not served for want of Correct address, it has again been adjd to 20/5/29. He wants copy of the plaint.

(19) The Suit as filed is for Rs 1876 15 0 which includes interest at 6% by way of damages on Rs 1590.15.0 from the date of the execution of the Sweeping bond Vide No 3 of Book in this office letter P 5000 dated 8.3.29 the PP was definitely told that the defendant cannot but be held liable for 1590.15.0 & interest thereon from the date of the demand notice if any. The plaint in para 11 mentions a regd notice but does not state its date.

(20) The PP does not also state anything about the attachment before judgt which he was advised to take in the case. If approved, the P.P.'s attention will be drawn to these points.

(21) In the meanwhile formal sanction of Govt to the filing of the Suit may be obtained, since it was filed pending sanction & in the meantime it would have been barred by time.

Serial No.

Draft to PP for print

DOM
15.4.29

L.R.)

(24) Issue as revised

4 To the Public Prosecutor, Bangalore

P 6248 dated 17.4.29

Requesting (1) the interest is claimed from date of bond

A (2) whether attachment before Judgt has been obtained

Ans A
DOM
20.4.29

R/ for print
DOM
13/5

Issue
14/5

P 6988 dated 16.5.29

Serial No.

The P.V.D is an answer only to the enquiry about the attachment. It is really surprising how the suit has been authorised by the Department to be filed, without making any enquiries about the possibility of recovering the decree amount. Draft reply to PPr Suit up

DOP
23/5/29

J. Shaw
P.W. 22/5

To The Public Prosecutor Bangalore

P 7133-4 / Law dated 22.5.29

intimating that no reply is received as to why interest is claimed from the date of bond and stating that without ascertaining the possibility of recovery of the the Suit should not have been authorised to be filed -

Copy to DOP 9.

The public prosecutor,
Bangalore

To The Legal Remembrancer
and Secretary to Government,
Law Department,
Bangalore

P. M. 6/3/29
Law 6/3/29
Sir, Re: Suit against the Electric ware house

I have the honour to submit herewith the draft plaint in the matter of filing a suit against the surety for your approval and early return as per Rules 83 of the Rules for Conduct of Legal affairs. The suit has to be filed in court before the 15th instant. The entire file is sent herewith for your reference.

I have the honour to be,
Sir,
your most obedient servant

have been raised without the express consent of the Surety. Again the date of the agreement has been altered from 10th march 1926 to 16th March and the alteration does not bear the initials of the Surety. There is also nothing in the records sent, to show that the first order ~~agreeing to close the case if the Sum of Rs 1590-15-0 was paid~~ of 21st march 1927 was communicated to the Surety that he was called upon to pay the amounts. There is thus, no justification for claiming the entire decree amount from the Surety. At best he may be said to be liable to pay Rs 1590-15-0 and interest thereon from the date of the demand notice, if any.

I am also of opinion that if the Suit is not filed against the Surety on or before the 11th instt, it may be held to be time barred

SUBJECT.....

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Section Legal

File No. 104-28

Serial No. 2

Diary No. of letter replied to.....

No. 5000

General and Revenue Secretariat

( )

the *192*

To

The Public Prosecutor

Bangalore

ate of issue..... 8/3/29

igned by ..... WTS

Sir,

With reference to your letter No: 420/28-29 dated 6th March 1929 regarding the proposed to be filed Suit against Mrs. S.A. Rasool for recovery of the amount due from the Electric Warehouse I have the honour to state that this case does not seem to have received the care and Scrutiny it deserved. The attachment of the judgment debtor's properties

st of enclosures.....

Copied by.....

Examined by.....

WD 0899—GPR—20,000—18-9-28

General and Revenue Secretariat.

File No of 19

Serial No.

The plaint hereafore may be amended on the above lines and filed in Court immediately, if so required by the Director of Industries and Commerce who is to be the plaintiff in the case since the agreement stands in his name. It appears to be

I am also to request you State why this Case has been delayed So long. You did not send these records earlier. In all such cases, It should be distinctly understood that, in all such cases, the papers should have to be sent, allowing a time of fifteen days for Scrutiny in this Office

A written report about this case & also the copy of the plaint filed may be sent in due Course. The records forwarded with your letter are hereunto returned

Thanks

Regd A

873

SUBJECT.....

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Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the

Date of issue 19/3/29

Signed by ...

st of enclosures.....

Copied by.....

Examined by.....

Section

File No.

Serial No.

Immediate No. P 5208

To The Public Prosecutor Rangoon

Sir,

I am to invite your attention to this Office No: P 5000/ Land 104-28-2 dated 5-3-29 regarding the suit to be filed by the Director of Industries & Commerce against Mr S.A. Rasool for the amount due from the electric warehouse, and to request you to report immediately the action in the matter

M/ over Thanook

WD 0399—GPB—20,000—18-9-28

From

The public prosecutor,
Bangalore.

To

The Legal Remembrancer,
and Secretary to Government,
Law Department,
Bangalore.

P 2944

Law 5/4

I have the honour to inform you that a suit against Electric ware House was filed in the First Munsiff's court on 11-3-1929 as desired by the Director of Industries and Commerce It has been numbered as as 458/28-29 and was posted to 25-3-1929 for Summons to defendant. The Summons was not served for want of correct address and the case has been posted to 20/5/1929 for fresh Summons to correct address. A copy of the plaint is sent herewith.

I have the honour to be,
Sir,
your most obedient
servant,

B. N. V. Deva

Public prosecutor,
Bangalore

In the Court of the First Munsiff, Bangalore

OS. No. 458/28-29

Plaintiff	Defendant
The Director of Industries and Commerce in Mysore, Bangalore	S. A. Rasool, Merchant, Chamarpet, Bangalore

Under order 7 Rule 1 of the C.P. code..

1. For Service of Summons, notice and processes by the Court address of the plaintiff is as follows: C/o of Mr. B. N. Vijaya Deva, M.A., Bar.at. law, Public prosecutor and Government pleader for Bangalore Division.

2. On 16-11-1928, the plaintiff obtained a decree against one S. M. Hussain in OS. No. 76/24-25; on the file of the Subcourt at Bangalore.

The moveables belonging to the said S.M. Hussain located in what was called Electric ware House were also attached before judgment and the plaintiff was arranging to sell the moveables attached and realise the Amount due.

plaintiff to forego portion of the claim to release the attachment and not to execute the decree.

5. The plaintiff agreed to release the attach and also to reduce a portion of the claim on certain Conditions which had to be decided later with the sanction of the Government. In Consideration where of S.N Hussain agreed to pay the decretal amount or such amount as the plaintiff would agree to receive after reduction

6. The defendant stood surety for the due performance of the said agreement agreeing at the same time to hypothecate his properties. He also delivered the title deeds of the property intended to be given as further security and executed on 16-3-1926 the agreement along with the said Hussain in Bangalore The same are herewith produced.

7. The plaintiff was authorised by Government to receive ~~*~~ Rs 1590-15-0 in full Satisfaction of the decree.

8. Neither the said Hussain nor the defendant Rasool paid the amount thus settled and wherefore the defendant

The defendant had also under taken in the agreement above referred, to hypothecate his property as collateral security for the amount due which he has so far failed to do, nor has he paid anything towards the decretal amount.

10. The defendant is therefore bound to pay the amount mentioned above and interest thereon by way of damages at 6% from 16/3/1926 upto date in all amounting to Rs 1876-15-0.

11. Inspite of repeated demand and a registered notice, the defendant has failed to pay this amount. Hence the suit.

12. The cause of action arose in Bangalore on 16-3-1926 when the suit document was executed by defendant and also subsequent to 21-3-1929 on which date Government auctioned the plaintiff to receive the reduced amount by Memo No. D. 8048/HE 148-26-4.

13. For purposes of court fee the suit is valued at Rs 1880-00 and for jurisdiction 1876-15-0 and Court fee stamp of the value of Rs 156 has been accordingly paid.

Bangalore
11-3-29

"verification in the original

"Copy"

B. N. R. W

public prosecutor

Bangalore

2/4/29.

Section Law

File No. 101

Serial No. 1,

No. P6248

To

The Public Prosecutor
Bangalore

Sir,

In reference to your letter No: 451/28-29 dated 2nd April 1929 forwarding copy of complaint filed in O.S. 458 of 28-29 on the file of the I Munsiff of Bangalore (Director of I & C v S.A Rasool) I have the honor to point out that in spite of my letter PSO. dated 8.3.29 wherein you were definitely told that the defendant can at best be held liable

thereon from the date of the
demand ~~note, or any~~, "you have
claimed interest by way of damages
from the date of the execution of
the bond itself, ~~I am~~ and I
~~am sorry~~ to request you
~~to report at once~~ whether you
have, as advised,
have secured by attachment
before judgment any of the
properties of the defendant.

and whether action
has been taken to obtain
attachment before
judgment as mentioned
in the bill and to
above.

yours etc

Legal Rt &
Soc to Govt

Dec 15/14

Dec 15/14

GENERAL AND REVENUE SECRETARIAT

D.O.No. P. 6984

Dated Bangalore, 13.5. 192

To, The Prothonotary
Bangalore

~~Dear~~ Sir,

I am desired to invite your personal attentic to this office No. P. 6248/Law dated 19-4-29 ~~and the subsequent reminders as detailed in the margin,~~ regarding ~~the first~~ original ~~regarding the Claim of~~ suit No. 458 of 28-29 (Director of Land C VS SA Rasool) on the file of the Munsiff of Bangalore and to request you ~~to be so good as~~ to kindly expedite your reply thereto, ~~as the matter has been pending for a long time~~ without further delay.

~~Yours sincerely.~~ Yours

To

Legal R

13/5/29

The public prosecutor,
Bangalore

To

The Legal Remembrancer,
and Secretary to Government,
Law Department,
Bangalore

Sir,

Re: OS 458/18-19 on the file of the I Munsiff, Bangalore, Director of Industries and Commerce W. S. A. Rasool.

With reference to your letter no. P 6988/Law of the 16th instant I have the honour to inform you that the whereabouts of Mr. S. A. Rasool is not known and the summons has not been served on him as yet. Such being the case it is not possible to attach moveables. The only property left for attachment is the suit land which, it is since learnt from the Amildar, Hoskote, has been resumed by Government for default of payment of Revenue

I have the honourable
Sir,
your most obedient servant

SUBJECT.....

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Diary No. of letter replied to.....

Section

File No.

Serial No.

No. 7133-4/Kat

General and Revenue Secretariat

( )

the *192*

To

The Public Prosecutor

Bangalore.

Date of issue. 27-5-29

Signed by H.V.U.

Sir,

Re: O.S. 458 of 28-29 on the file of the I Munsiff of Bangalore (Director of Industries and Commerce vs S.A. Rasool).

With reference to your letter No: 499 dated 21st may 1929 regarding the above I have the honour to invite your attention to my letter No: Pb 248/Law dated 19.4.29 and to state that no reply ~~~~ is received as to why in spite of instructions

List of enclosures.....

Copied by.....

Examined by.....

over

WD 0399—GPB—20,000—18-9-28

interest has been claimed from the date of the Suit bond I am also to observe that it is really surprising how the Suit authorised by the department concerned to be has been filed without ~~making~~ ascertaining the whereabouts of the defendant and without making any enquiries as to the possibility of the recovery of the amount due.

I have etc.

Legal Rv

No. 7135-23/[illegible]. dy 27-5-29.

Copy forwarded with Compliments to the Director of I and C for information and necessary action—